

THE POLYNESIAN.

SATURDAY, MAY 16, 1857.

Lord Brougham has brought a bill into the British House of Lords to prevent litigation by providing Courts of Reconciliation. The judge at the Court will hear the parties at strife and give his opinion and advice on the matter. If the parties abide thereby the agreement will be final and binding. At the same moment the *Times* whilst discussing a government measure to abate the nuisance of the ticket-of-leave system stoutly declares that the antecedents, bad as well as good, of a prisoner should be known to the judge before he determines on the amount of punishment to be applied in his case. Now it seems to us that during this year of Grace and respite from legislative hubbub, 1857, it would be worth the while of some who hope to be in their places in 1858 to make and print laws for us, to consider how far the above hints might be made bases of improvements in our own system.

This is a dull subject to dilate upon, and yet one that interests more than they know an overwhelming majority of our countrymen. It has been said till people will not thank us for repeating the remark, that litigation with the natives amounts to a passion; baulked in the first throw they pursue their chance from court to court, doubling the stakes at every move. The subject of dispute is often one of very inferior consequence, but the same may be said of many of the quarrels that shake the nations, filling the earth with young widows and old mourners. To be victorious and to enjoy the excitement of becoming so one need not always have a sense of being in the right. Might not Courts of Reconciliation prove the very thing that is wanted here? In places where Chambers of Commerce are established many difficulties are nipped in the bud by intervention of a similar kind. Those who are most familiar with our lower courts are best aware that in many cases there seems to be, what people call, a little right on both sides. And yet the matter has to be decided in favor of one and against the other or the plaintiff non-suited, and even that is seldom the end of it. But could a "conciliatory" judge reason a little with the parties, and wipe their spectacles for them so that they could better see the shape and position of the thing contested, a great saving of trouble and expense and a vast waste of time might and would be effected. In the matter of fences, for instance, and trespasses committed by cattle, no inconsiderable amount of wrangling, and suing, and preaching even, might have been dispensed with to the ultimate advantage of all parties, if such courts had hitherto existed, and much more of the same kind in future may be prevented by the institution of that sort of court. The generality of men, as we believe, are inclined to "do about the right thing," but when difficulties occur which can only be settled according to the strict letter of the law, there is often an injustice done, or, to express it otherwise, an unnecessary expense heaped upon one of the litigants, which not enriches his opponent but leaves him poor indeed. That opponent's ends were often better subserved by a less crushing process. Besides it touches one's pride to be ordered to court, and nothing warms the blood more thoroughly than to be cast on a doubtful suit. We merely suggest the topic at present as one worthy of reflection.

And now for the principle advocated by the *Times*. Speaking of a scheme of Sir G. Grey for the treatment of convicts that paper remarks—

"It exacts no discrimination in the characters of the criminals tried, and demands no discrimination in the nature of the punishments imposed. This is the great omission of our criminal code; it punishes the evil deed without any reference to the history and habits of the evildoer. It imposes upon men and youths the most dissimilar in their lives, education, and character, exactly the same routine of punishment and the same liability to impair contact; and thus it arms those whom we must continue to call the sentimental philanthropists with the means of doing a grave social wrong, by comprehending within the same lenity the callous and incorrigible no less than the casual and corrigible breakers of the law."

It is not necessary to obtrude many remarks upon the reader to convince him that a similar condition exists here. Our evildoers all go to the Station-house before trial, and to the Fort when convicted. They work together, they eat together, and they sleep together, the broad distinction of

sex being the only one provided for. Of course persons committed for trial charged with murder, or convicted of that crime, do not associate with the rest. But house-breakers, forgers, swindlers, and those milder offenders who merely allowed their passions or a horse to run away with them, live together on terms of equality. Becoming familiar, they discuss their former ways of life—and the heroism of the orator of the moment loses nothing, you may be sure, in his narration of it. Within those cells at night what vistas of a career undreamed of before must have opened out before the eyes of youngsters when the Jack Sheppard of the company, tired of homage, turned over to sleep.

The article is pursued as follows:

"Perhaps, by leaving a certain amount of discretion to the judges in passing sentence on criminals, it may indirectly, and in a certain degree, effect this end. But we maintain that this cannot be done so as to satisfy the requirements and insure the safety of society until a wider definition be given to crime. Hitherto English procedure has erred on the side of leniency. Jealously tenacious of the matter of indictments and of the evidence strictly bearing on their proof, it has sternly rejected all testimony as to the character of the accused, save that which was of a favorable nature. Thus, in many instances, where no previous conviction could be proved, men whose whole life had been passed in the furtherance of crimes in which they had the cunning to avoid an ostensible participation have escaped with no worse a sentence than alighted on the unhardened and unskillful offender. We hope it will not be deemed too wide a departure from the better principles of English law to receive and demand evidence of the lives and associates of those who are convicted before our criminal tribunals."

This may sound harsh, but cannot be called unfair. If a man sees fit to serve a long novitiate and not attempt the more hardy and risky crimes till he feels himself to be a finished hand, why should not the judge know it? If the term of punishment may be reduced on account of previous good behavior, it may just as well be lengthened in view of previous bad conduct; or else throw the culprit's antecedents altogether on one side and know nothing of him till the moment he commenced the transaction with which he is charged, or after he brought that particular episode of his life to a conclusion. If there is to be a fulcrum anywhere it should be placed exactly in the centre of the lever, and Justice and Mercy preside each at an opposite scale.

The journal from which we have already quoted in another article expresses itself thus:

"We have to deal with three distinct classes of convicts—the positives, the comparatives, and the superlatives of crime. There is not much difficulty in arriving at a fixed resolution with regard to the first and the last of these classes. We must make up our minds to keep the first at home and to use every endeavor for their reformation. All the machinery of reformatories, of model prisons, of industrial training, of moral and religious teaching which can be brought to bear upon them, will no doubt be employed in their cases."

It is more especially for the positive class that we would say a word. It is the flour that becomes dough, and the dough that changes into bread. If the flour is bad the bread cannot be good, and the worse the flour is the worse the bread will be. Here you have a simile for those even who do not understand the rudiments of grammar. But to keep the flour sound you must preserve it in a wholesome place, that is to say, you must pay particular attention to the first or juvenile class of convicts. It is much to be regretted, yet hardly to be wondered at, that our criminals of all ages, and almost all classes, the males after their kind and the females after their kind, are "lumped" together in prison for mutual debasement. Nothing is farther from our purpose than to reflect upon those who have had charge of the prisoners. We think we can estimate the difficulties against which they have had to contend—bad jails, and no distinctions prescribed or provided for by law. As it is we are in advance of many and perhaps most neighboring governments, but we want to see these islands something more. It seems to us unkind—although since the dance-house question we have had solemn misgivings as to the genuineness of our morality—that boys and girls who have committed their *faux pas*, that took perhaps an hour or half of that period in the accomplishment, should for that hour's or that half hour's abandonment be sent into a prison the moral infection of which not one in one hundred can ever afterwards shake off. It amounts to reading them out of the Church of hopeful humanity, to excommunicating them, to sending them plump to the devil. In a community of men all men are brothers, but instead of forgiving these little ones their offenses to the full complement of "seventy times seven," we virtually (and

no doubt as we hope, virtuously) cut them off at the first indiscretion, the difference in forbearance between our code and our Saviour's being in figures that of 1 to 490.

The Reformatory system amongst us is just as null and void as if such a thing had never been talked of since the creation of the world. A young girl, for instance—trained in the traditions of her country, unblest with the moral teachings of a Hannah Moore, her first ideas of piety confined to her mother's coal-scuttle bonnet, her temperament that which her parents gave her—commits an act of folly. We will not defend her vanity; we will not even plead that the nuptial tie is an innovation here. But she falls, is tried in bewilderment, and learns in prison how to escape ever becoming a good girl again. This is a matter that wants looking into. If you were peeling *kalo* you would not throw to the expectant pigs every bulb that had a speck on it. But you throw these girls into a place worse than a pig-stye—into a slough of moral pollution. In company with old offenders of their sex, they bronze their faces while they work in the sun, and forget how to blush, or what is as bad, become ashamed of their blushes. The "mothers of England" or the "mothers of America" is all the cry just now; but here we are consigning a large portion of the rising female generation to such influences, and leading them towards such practices as will effectually intervene between them and maternity, if there be anything sacred in that word. They may become the parents of brats, but hardly what we understand by mothers.

As to the judges, we adhere to the give-ample-verge-and-scope-enough principle. We like the idea of their taking into consideration the quality of the back to be operated on, as well as the technical view of the number of lashes. But above all, we could wish to see the boys and girls reclaimed—the little good-for-nothings that they are—God bless them! And if the Legislature of 1858 will allow itself to be presented with a motto at this early day, we would suggest, Take care of Depravity's pence and the pounds will take care of themselves.

Seeing what contrary opinions are held as to what things are good for us and what are bad, it is not surprising that further differences should exist upon the less palpable distinctions between things that are good and expedient and others that are good but inexpedient. The idea of making a series of charts of all the disposable lands on these Islands, we do not hesitate to call a good idea in itself. The work would be valuable for statistical purposes as well as convenient for persons about to settle here. How much these latter would be benefited by it we do not undertake to say, but no doubt it would be of some advantage to them. In the first place, however, it must be remembered that within an area of one hundred, or even fifty acres, there are as a usual thing varieties of soil which an intending purchaser should see for himself. Then again private lands in the market as well as public lands would, of course, have to be surveyed and tested if the object really were to afford people the best chance to suit themselves. This would make an expensive job and a long one too, nor would the higgling about boundaries, which is common enough, help to facilitate the work. Besides the purchaser might only want a part of a land, and then there would have to be another survey. Unless the government footed the first bill—and we cannot imagine why it should—the cost of that operation would not make the land come cheaper to the buyer, when it was the property of a private man. It seems to us that a simple register of lands would answer all practical purposes so far as enquirers are concerned. The island, district and neighboring ports might be mentioned; the estimated number of acres, or the real number, if possible; some of the purposes to which the locality and soil were adapted, the elevation, and in short quite a sufficiency of particulars to guide people in their research. There are plenty of men amongst us who could start the thing, charging a small fee for the insertion of particulars, and letting it be known, here and abroad too if they saw fit, where people could find the intelligence office. Persons wishing to sell would find their advantage in having their lands brought to the immediate notice of others about to settle, and these latter would have no need to run up and down the country making unintelligible enquiries, and often going past the very place it would suit them to buy and equally suit other parties to sell.

The Rev. William Speer, who during his residence here became so favorably known to a large proportion of the community, has forwarded us a copy of his "Answer to the Common Objections to Chinese Testimony, and an earnest Appeal to the Legislature of California for their protection by our Laws." The pamphlet is honestly written, as every one would imagine who knows how warm a friend the author is of the race amongst whom his labors as a missionary have been performed to the sacrifice of his health. It seems that the great drawback to the prosperity and comfort of the Chinese is their not being allowed to give evidence in a court of law. They are by no means insensible to the obligations of an oath. Their belief in punishments to be undergone in a future state is a grand feature of their idolatrous system. In their own country there exist twelve known forms for the administration of oaths; sometimes they are written and burned; sometimes the head of a cock is cut off, and salt is sometimes scattered on the ground. An American jurist of eminence says, "all that is now required is, that the oath should bind the conscience of the witness," and this is the object of the forms in question. Blackstone says, "All witnesses, of whatever religion or country, that have the use of their reason, are to be received and examined." In the Penal Code of the existing Dynasty there are as many as eighteen degrees of punishment provided for those who bear false witness. The writer does not claim for his *protégés* all the credibility that attaches to the oath of a Christian, but calls out against their being declared non-competent.

His remarks allude to the Chinese generally, not to the upper orders only.

"Monsieur Laplace, the French navigator, says: 'I repeat that the Chinese are very much our superiors in true civilization—in that which frees the majority of men from the brutality and ignorance which, among many European nations, place the lowest class of society on a level with the most savage beasts.' On which passage Sir J. F. Davis, late governor of Hongkong, adds: 'M. Laplace is quite right: the lower classes of the Chinese people are better educated, or at least better trained, than in most countries.' (The Chinese, Vol. II: p. 29)."

The pamphlet before us is not so strictly and closely written as to exclude all matter of an amusing nature. Talking of pretenders to a knowledge of ethnology, geology and sciences of that kind, Mr. Speer tells a rather good anecdote with which we will conclude this hasty notice.

"The reader probably remembers reading in the newspapers a few years ago how the people of the city of Boston were gratified and surprised by the announcement that a great Oriental scholar was in their midst, and that he would unbend for them the dingy ceremonies of the mummy of an Egyptian Princess, and interpret the cabalistic symbols thereupon. The literati of Harvard and the savans of the Medical School, ladies, antiquaries, undertakers, and dry-goods dealers, all were personally or professionally concerned, and gathered to see and learn. Day by day, bandage after bandage was stripped off, and the history of the renowned female skillfully unfolded. Wonder at the embodiment of so much wisdom as that of the learned interpreter was mingled with gratitude that it should have visited our far Western sphere. All the wisdom of Boston sat childlike at his feet. Alas for the inquisitiveness of science! alas for the "great Egyptologist, Mr. G—— R. G——!" alas that modesty should not have restrained the removal of the last fig-leaf from the defunct Pride of the Pharaohs. The hieroglyphics and symbols and deep disquisitions the audience did not understand. But all were at length stripped away. To the indignation of Warren, to the astonishment of Bigelow, to the confusion of Agassiz, while ladies blushed, and beaus giggled, and sages laughed outright, it became evident that the "Princess" was a man! and the Egyptologist a—humbug!"

Sir Robert McClure, Captain of H. B. M.'s ship *Esk*, tendered his personal respects to their Majesties, the King and Queen, on the 9th inst. The King being indisposed, he saw only the Queen.

Sir Robert and Captain Sotheby, of H. B. M.'s ship *Pearl*, had an unofficial interview with the King on the 11th, after which they called at the residence of His Royal Highness, Prince Kamehameha.

On the 13th, Captain Pichon of H. I. M.'s S. *Eurydice*, called on the King and Queen—also Captain Sotheby, of H. B. M.'s S. *Pearl*, to take leave of their Majesties.

Mails.

The mail for the United States will be dispatched per *Yankee* on Monday or Tuesday next.

The *Fanny Major* was to leave San Francisco on the 10th, and may be looked for in about a week with the mail of April 5th.